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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES

Forty-third session

SUMMARY RECORD OF THE 31st MEETING

(FIRST PART*)

Held at the Palais des Nations, Geneva,
on Tuesday, 27 August 1991, at 3 p.m.

Chairman: Mr. JOINET
later: Mr. HELLER
later: Mr. TURK

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* The summary record of the second part of the meeting appears as document E/CN.4/Sub.2/1991/SR.31/Add.1.

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The meeting was called to order at 3.25 p.m.

ORGANIZATION OF WORK (continued)

1. The CHAIRMAN said that the Bureau suggested that, in view of the importance of its mandate, the Sub-Commission's Working Group on Methods of Work should meet for one week between sessions in order to draw up precise recommendations. The Bureau also recommended that the Working Group should be given a specific mandate and that the current Chairman should be a member of it.

2. As far as the proceedings for the rest of the session were concerned, statements by observers would be limited to five minutes per item and to seven minutes in the case of a composite item; the time allowed to Government observers for statements equivalent to a right of reply would be limited to three minutes. Members of the Sub-Commission could make only one statement lasting 10 minutes per item. Those arrangements were necessary not as a form of censorship but as a democratic way of sharing the available time.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (E/CN.4/Sub.2/1991/5-10, 48 and 55; E/CN.4/Sub.2/1991/NGO/11, 15, 22 and 32; A/46/171-E/1991/61; E/CN.4/Sub.2/1990/9-12; E/CN.4/Sub.2/1989/42 and Add.1; E/CN.4/Sub.2/1987/31)

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DISCRIMINATION AGAINST INDIGENOUS PEOPLES (agenda item 15) (continued) (E/CN.4/Sub.2/1991/33-37, 39 and 40)

THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY (agenda item 19) (E/CN.4/Sub.2/1991/WP.4; E/CN.4/Sub.2/1991/NGO/25; E/CN.4/Sub.2/1990/47 and 48)

3. Mr. KEILAU (Centre for Human Rights) introduced agenda item 7, which the Sub-Commission had first considered every two years as from its thirty-first session and had then decided, in 1989, to consider every year. In its resolution 1987/26 it had decided to add the sub-item entitled "The role and equal participation of women in development".

4. Introducing agenda item 8, he drew the Sub-Commission's attention to Mr. Türk's second progress report which, following the first, had been prepared in response to the request made by the Commission on Human Rights in 1987 for an updating of the conclusions and recommendations of its report entitled "The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress". Mr. Türk had also prepared a working paper on economic and social indicators and their use in monitoring the realization of economic, social and cultural rights (E/CN.4/Sub.2/1991/WP.3). The Sub-Commission's attention was also drawn to Mr. Suescún Monroy's report on the method and plan of work for the study on human rights and extreme poverty (E/CN.4/Sub.2/1991/18). The Sub-Commission also had before it document E/CN.4/Sub.2/1991/38 and Add.1 prepared by the Secretary-General on the same subject, as well as document E/CN.4/Sub.2/1991/47 prepared by Mrs. Mbonu on the human rights dimensions of population transfer.

5. He then introduced agenda item 4, which the Sub-Commission had been considering since 1962. At its current session the Sub-Commission would have before it Mr. van Boven's progress report on compensation for victims of gross violations of human rights (E/CN.4/Sub.2/1991/7); for its consideration of the question of human rights and the environment, it would have before it document E/CN.4/Sub.2/1991/8, prepared by Mrs. Ksentini; and for its study of the right to freedom of opinion and expression it would have the updated preliminary report by Mr. Türk and Mr. Joinet (E/CN.4/Sub.2/1991/9). For its consideration of traditional practices affecting the health of women and children, the Sub-Commission would have before it Mrs. Warzazi's report, the preliminary version of which had contained recommendations which the Commission had endorsed. An international regional seminar on the subject had been held at Ouagadougou (Burkina Faso) from 29 April to 3 May 1991 (E/CN.4/Sub.2/1991/48). On the question of discrimination against HIV-infected people or people with AIDS, the Sub-Commission would hear a statement by Mr. Varela Quirós on his progress report (E/CN.4/Sub.2/1991/10). Lastly, the Sub-Commission would consider the Secretary-General's report on the scope of education provided to members of the police and armed forces (E/CN.4/Sub.2/1991/5), as well as the working paper on a declaration on minimum humanitarian standards (E/CN.4/Sub.2/1991/55) submitted by Mr. van Boven and Mr. Eide.

6. For item 14, the Sub-Commission would have before it Mr. Bandhare's working paper on the interrelationship between international peace and the effective realization of all human rights, particularly the right to life and the right to development (E/CN.4/Sub.2/1991/32).

7. Concerning item 19, he said that the Sub-Commission had decided in 1988 to consider the question of the right of everyone to leave any country, including his own, and to return to his country. The following year it had decided to establish a sessional working group to prepare a revised version of the draft declaration on the subject. The working group had met for the first time during the forty-second session of the Sub-Commission and again during the current session. Its report was contained in document E/CN.4/Sub.2/1991/45. The Sub-Commission's attention was also drawn to the working paper prepared by Mr. Eide and Mr. Flinterman (E/CN.4/Sub.2/1991/WP.4).

8. Mr. SUESCUN MONROY, introducing the plan of work for his study on human rights and extreme poverty (E/CN.4/Sub.2/1991/18) under agenda item 8, recalled that by its resolution 1990/15 the Commission on Human Rights had requested the Sub-Commission to examine in greater depth the question of extreme poverty and exclusion from society, particularly from the standpoint of human rights. On the basis of that mandate, the Sub-Commission had requested him to prepare the study.

9. Extreme poverty was an immense grey area in the world, going far beyond the question of human rights. It was therefore necessary to define the problem, determine its causes, make clear the interrelationship between extreme poverty and human rights, and outline solutions. In chapter I of the plan of work, concerning the existence, scope and characteristics of poverty and extreme poverty, it was stated that poverty persisted or was re-emerging in various parts of the world. The past 10 years had been particularly difficult not only for sub-Saharan Africa and Latin America, which had experienced a sharp decline in income, but also for southern Asia. The problem was not, however, restricted to countries in the third world and "new poor" had emerged in industrially booming regions of western Europe and North America, where there was often a tendency to marginalize them. In the developing countries there were hundreds of millions of poor people, or persons having an income of less than US$ 370 per year, the figure deemed sufficient to satisfy a person's quantifiable biological needs for food, clothing, housing and medicine. Although that was the visible face of poverty, its hidden face - the chain of frustration and suffering due to exclusion from society, which was sometimes harder to bear than hunger - must not be neglected. At the edges of the vast band of poverty there were more than 600 million people living in extreme poverty. That was the essential starting point for any search for a solution. Measures aimed solely at alleviating poverty without affecting the core of the problem, extreme poverty, must be avoided. Since it was a well-known fact that statistics did not tell the whole truth, a new research methodology must be found by listening to the poor themselves.

10. With regard to the causes of poverty, which were dealt with in chapter II, it should first of all be borne in mind that underdevelopment was both a domestic and an international obstacle for countries, since the so-called international order often hindered progress. Also, some regions and communities were real reservoirs of extreme poverty. That particular aspect of the problem would perhaps deserve a separate chapter. It must also be stated that the economic adjustment measures imposed on developing countries by the World Bank and the International Monetary Fund had made the situation even worse. A whole range of factors was involved: the economic crisis in the countries of Eastern Europe, the unequal distribution of income in some countries, social imbalances, the lack of birth-control policies, discrimination against women (particularly in rural areas), persistent illiteracy, the lack of any determination on the part of Governments to cope with the problem, and the inadequacy of international cooperation.

11. Chapter III, dealing with the interaction between poverty and human rights, would be concerned with determining to what extent the civil, political, economic, social and cultural rights recognized by the international community could be realized or were doomed to remain mere aspirations. To that end, the study would, more specifically, cover the right to an adequate standard of living, the right to apply to the courts, the right to choose one's residence and to found a family, the right to work, education and social security, and the right to participate freely in public affairs. In order to arrive at a better understanding of the problems involved and to see them through the eyes of those concerned, it was essential to ascertain the views of the poor themselves.

12. Work on chapter IV of the study, dealing with solutions, was likely to be difficult because the approach adopted in the vast bibliography on extreme poverty was always economic. In order to know the reality of the tragedy, it was necessary to go beyond economic factors and social indicators and try to determine how extreme poverty impeded the functioning of modern democratic societies.

13. The measures that could be envisaged had to be taken at the local, national and international levels. It was chiefly for States to embark upon national and local policies expressly designed to eliminate and to prevent poverty. It had been wrongly considered that economic mechanisms would suffice to settle the problem, overlooking the fact that they did not reach extremely poor people. Simple, effective, direct and systematic solutions therefore had to be found in order to put an end to the tragedy of extreme poverty by the end of the century. That entailed, inter alia, the establishment of national offices to guide and harmonize the action taken, and the creation, by the United Nations, of an agency to coordinate all the necessary measures up to the year 2000. Action committees including representatives of the poor should also be set up to combat poverty at the national and local levels. Any comments made regarding the plan of work for his study would be taken into account.

14. Mr. VARELA QUIROS introduced his progress report on discrimination against HIV-infected people or people with AIDS (E/CN.4/Sub.2/1991/10) under agenda item 4, pursuant to the mandate conferred on him by resolution 1990/65 of the Commission on Human Rights. The problem was particularly serious since it affected not only people with AIDS but also members of their families. AIDS itself, however, did not discriminate between races, sexes or nations. By July 1991, 371,802 cases had been reported to WHO by 163 countries, representing an increase of over 5,000 cases in one month. The problem was therefore real and worldwide. Since, despite all the efforts of WHO and non-governmental organizations to set standards, the attitude of the general public to people with AIDS had not changed, it seemed necessary to supplement that standard-setting work by an information and education campaign designed to make people understand that AIDS was a disease like any other and was even more difficult to contract than tuberculosis, for example. It should once again be pointed out that AIDS was transmitted only through the blood and body fluids, by sexual contact, and perinatally. Consequently, there was no reason

why people with AIDS should be discriminated against in matters of housing, in the schoolroom or at work. In the provision of information people must also be made to understand that the traditional prejudices against certain target groups had no scientific foundation. A large number of the cases reported to WHO in fact concerned heterosexuals. It could therefore be said that the problem was affecting specific population groups less and less and society as a whole to an increasing extent. Instead of referring to risk groups, reference should be made to risk practice: that was where information could help to bring the pandemic under control.

15. In addition to its consequences as far as discrimination and equality of rights was concerned, AIDS had other effects. In particular, it afflicted the least developed countries, whose already limited resources would be strained by costly treatments. Countries where a high proportion of the population between 15 and 40 years of age was infected would, in the course of time, witness a considerable decline in their capacity for population renewal and an inevitable reduction in their workforce. According to WHO estimates, the number of infected persons was expected to rise to between 30 and 40 million by the year 2000. One million of them would be children who might not reach the age of employment, with the result that output and development in their countries would be affected. The problem stated in his second progress report was therefore not only the problem of the human rights of people with AIDS but also that of the rights of the entire population of the planet, unless an effective vaccine was developed. In fact, even if such a vaccine was produced, consideration had to be given to the harmful consequences which its marketing could have for mankind if the product was marketed for the benefit of one particular country or company. It was therefore necessary to find a viable way of ensuring that any vaccine that might be developed would be considered the common property of mankind, precisely because AIDS endangered not only survival of populations but also the development of most developing countries.

16. The complex question had occasionally arisen as to whether, in order to provide people with AIDS with better protection, new international instruments would have to be prepared. Some people considered that the instruments at present available to the international community would not be sufficient, while others were of the opinion that the process of drafting such instruments would be time-consuming as would the accompanying debates on their ethnical or cultural aspects. He himself took the view that the international community already had the instruments needed to guarantee to the sick the right to non-discrimination, health care, education, equality and so on.

17. He then reviewed the fundamental question of children who had been orphaned as a result of AIDS. In many countries, many such children were themselves infected with the disease and had, furthermore, been abandoned by society: that was an appalling situation at a time when the international community had just adopted the Convention on the Rights of the Child, and also a dangerous one for everyone, since the children concerned might engage in all sorts of illegal activities, including prostitution, which was a major factor of infection. It was essential to take the necessary measures to protect them.

18. Referring to the conclusions and recommendations contained in his study, he pointed out first of all that the rules of humanitarian law were powerless to combat discrimination and were of little assistance in promoting public health. The most effective weapon was really education, which made it possible to understand the situation and the ways in which the disease was transmitted, and to combat the exclusion from society which was so conducive to its anarchical transmission. The scope of the study should not be limited to the discrimination practised directly against infected persons but should be extended to cover discrimination in the general context of AIDS, against the relatives of people with AIDS, for example, He appealed to those responsible for AIDS policies to promote the dissemination not only of scientific knowledge but also of the human rights principle of non-discrimination.

19. He paid tribute to the staff of WHO and its Global Programme on AIDS and that of the Centre for Human Rights and many non-governmental organizations which had supplied him with specific information on the phenomenon and its economic and social consequences, as well as on the action and decisions taken in certain countries or by certain courts. He would elaborate on some of those topics in his final report and would pay very close attention to any suggestions made by the experts of the Sub-Commission, non-governmental organizations or specialized agencies of the United Nations system.

20. Mr. Heller took the Chair.

21. Mr. BANDHARE introduced the working paper (E/CN.4/Sub.2/1991/32) which he had prepared under agenda item 14. The subject covered by the paper had been discussed in the Sub-Commission since 1981. All kinds of events of major importance had occurred since then, especially in the past two years, and the consideration of the item was of greater current interest than ever before. The close link between human rights and the peace which the United Nations had been established to maintain was recognized in the preamble of the Organization's Charter itself. It was clear that as soon as human rights were no longer respected, peace and also development, were endangered. The close relationship between them, in an era which could be described as that of the third generation of human rights, was more and more unmistakable. The events now occurring were of considerable importance for the future of States, international organizations and mankind in general, and the increasingly clear affirmation of the rights characteristic of democracy could already be noted in a growing number of countries. Since the cold war had also come to an end, the future of mankind seemed promising.

22. The question whether peace was a prior condition for the respect of human rights or whether it was the other way round no longer arose. A realization had emerged that peace and human rights were in fact the two ends of a chain; peace guaranteed the survival of mankind and the protection of the right to life, and human rights made it possible for mankind's creative potential to be realized. The Sub-Commission therefore had a mandate of vital importance and a decisive role to play. The whole world was calling for the elimination of all weapons of mass destruction and aspired to the free exercise of human

rights, but those praiseworthy goals could not be achieved through the use of force, whether economic or political. The necessary effort must come from societies and States themselves, and the protection offered must be applied to all countries without discrimination. The right to life, the most important of all human rights, naturally comprised the right to satisfy essential material needs, including the right to food security. There could be no freedom for a human being in need.

23. The five main themes of his paper were peace, which should not be interpreted as the absence of war; independence; security, which should not be limited to the absence of military danger but should also include political, social and hunanitarian aspects; disarmament, which did not consist solely of signing the START agreement but presupposed an abhorrence of all violence; and development.

24. He then read out the recommendations which he was putting forward to the Sub-Commission. They were mainly concerned with making a study of the relationship between international peace and the effective realization of all human rights, especially the right to life and the right to development. The study would be concerned in particular with ways of making respect for human rights a fundamental element in the new world order that was taking shape. If the Sub-Commission decided to go ahead with the study, it ought to discuss in advance the main issues to be dealt with and to define them clearly.

25. Mrs. DAES introduced the report of the Working Group on Indigenous Populations on its ninth session (E/CN.4/Sub.2/1991/40). After thanking her colleagues in the Working Group and the members of the secretariat who had so efficiently helped her with her work and after announcing that the report would soon be reprinted, she described its main features. Without going into detail in a report which comprised an introduction, five chapters and four annexes, she wished to stress the main points. To begin with, the report had been adopted unanimously at the end of highly-disciplined meetings which had been attended by more than 500 persons - Government observers, representatives of indigenous peoples' organizations, non-governmental organizations and experts, academics, students and other persons concerned. All the major ideas put forward during the meetings had been taken up, as had the proposals made by participants, especially by ILO. The unremitting efforts of participants were evidence of the importance and urgency of the work done by the Working Group, in view of which she appealed to the Under-Secretary-General for Human Rights to ensure that sufficient staff, particularly permanent staff members, without whom the Working Group could not function properly, should be assigned to its meetings in future.

26. She then reported on her mission to Brazil, which had been a great success and had turned out to be very constructive thanks to the valuable contribution made by representatives of the indigenous populations, particularly the Yanomami leaders, and to its impeccable organization by the Brazilian Government. She had travelled to the Amazonian forest and had met representatives of the Yanomami people. At the end of her mission she had sent two confidential reports to the United Nations Secretary-General, who had

acknowledged receipt in a letter whose contents were so important that she felt they should be included in the summary record of the meeting. The letter from the Secretary-General read as follows:

27 June 1991

"... I am impressed by the thoughtfulness and detail of this very valuable and disturbing document.

As you may know from my staff, I have directed that the United Nations support not only immediate action against the malaria threat faced by the Yanomami people, but also the Brazilian Government's efforts to protect their health, to demarcate Yanomami lands, and to effectively expel the garimpeiros from the area.

I will myself continue to raise these matters with the Government of Brazil and will welcome your further suggestions and advice."

She therefore took note of the commitment of the Secretary-General, who both showed his concern for the cause of the Yanomamis and confirmed the possibility of using his good offices at a humanitarian level. She also reported the difficulties being experienced by the Brazilian Government, in which she had every confidence.

27. She also reported on her mission to Japan from 19 to 30 May 1991, during which she had been able to meet many leaders of the indigenous peoples, academics active in inter-ethnic relations, and members of the Japanese Government and many members of Parliament. The Japanese Government had made a contribution of US$ 20,000 to the United Nations Voluntary Fund for Indigenous Populations, and two members of Parliament had pledged a symbolic contribution of 1 million yen on behalf of various groups.

28. Turning to the preparation of standards for the rights of indigenous peoples, she said that the Working Group had further refined the provisions of the draft declaration on the rights of indigenous peoples contained in document E/CN.4/Sub.2/1991/36 and had proceeded to a first reading. In the light of the comments, observations and amendments proposed, which were reflected in paragrahs 47 to 57 of the Working Group's report, the Working Group had then prepared a revised version of the preamble and of the first three parts of the draft declaration, which in turn had been submitted to the participants, who had welcomed it. On that basis, the Working Group had formulated its recommendations, which had been agreed upon unanimously and were contained in annex 1 to the report. The recommendations related to an extremely wide range of issues dealing, inter alia, in addition to the draft declaration on the rights of indigenous peoples, with the importance of dialogue, future meetings of the Working Group in Latin America or Asia, and technical assistance and environmental protection activities. The attention of members of the Sub-Commission was drawn in particular to recommendations 1, 6-9, 11, 13-14, 16-17, 22-24, and 32. In conclusion, she stated that the Working Group had decided to include items on "Economic and

social relations between indigenous peoples and States", "Ownership and control of the cultural property of indigenous peoples" and "International Year for the world's indigenous peoples" in the agenda for its tenth session.

29. Mr. ALFONSO MARTINEZ introduced the preliminary report on the study of treaties, agreements and other constructive arrangements between States and indigenous populations (E/Cn.4/Sub.2/1991/33), which the Sub-Commission had requested him to prepare in its resolution 1990/28 of 31 August 1990.

30. The report was only a preliminary report. It comprised an introduction and three chapters. Chapter I traced the origins of the study, from the time when the Sub-Commission had put forward the idea in 1987 to the time when the Economic and Social Council, in its resolution 1989/77 of 24 May 1989, had authorized the study.

31. In chapter II he described his research and other activities on the issue, mentioning the difficulties which he had encountered and the help which he had received. In that connection he wished to correct an oversight by adding the name of Mr. David Weissbrodt, who had provided him with very useful documents, as one of the perons to whom he was indebted. Although he had been best by many difficulties, particularly financial, he could nevertheless report some positive elements, including two missions, the first to Seville, the second to the Library of Congress in Washington, D.C. He had also, at their invitation, visited indigenous communities several times in Canada, where he had attended the Six-nation Treaty Forum organized by the indigenous communities, and in the United States of America.

32. In chapter III, which he considered the most important, he recalled first of all the origins of his mandate established by Sub-Commission resolution 1988/20, Commission resolutions 1988/56 and 1989/41, and Economic and Social resolution 1989/77. He also referred to the outline of the study (E/CN.4/Sub.2/1988/24/Add.1) which he had submitted to the Working Group and to th Sub-Commission in 1988, and to Mr. Martínez Cobo's report (E/CN.4/Sub.2/1986/7 and Add.1-5), which constituted the basis of all the Sub-Commission's work on discrimination against indigenous peoples.

33. In chapter III, section B, he analysed the purpose of the study and restated his firm belief that it must offer elements for the achievement, on a practical level, of the maximum promotion and protection possible, both in domestic and international law, of the rights of indigenous populations and especially of their basic rights (para. 71). There were also some useful conclusions and recommendations regarding ways of implementing the key ideas on which, in his opinion, lasting and equitable relations between States and indigenous peoples should be based - mutual recognition, harmony and cooperation, instead of confrontation, rejection and ignoring the other party. He would endeavour, through those recommendations, to contribute to the initiation of a standard-setting process at the national and international levels through negotiations founded on good faith and mutual understanding of the interests of each of the parties, the successful outcome of which would be guaranteed by commitment on the part of all of them to respect the results (paras. 83-85).

34. The nature of the study, dealt with in section C, was essentially technical and legal, but it was clear that certain historical, sociological and anthropological factors would also have to be taken into account. The geographical scope of the study, covered in section D, could clearly not be limited to a particular region of the world or to a particular group of countries and that the study was, by definition, universal. His research so far was designed to identify existing treaties, agreements and other constructive arrangements between States and indigenous populations. He had come to the conclusion that the expression "other constructive arrangements" should be construed as referring to any legal text or other documents which were evidence of consensual participation by all parties to a legal or quasi-legal relationship (para. 96). He had also considered that account should be taken in the study of the distinction made in work done by the United Nations on the subject between "minorities" and "indigenous populations or peoples". He was aware of the difficulty which that represented, but thought he was capable of making that distinction with total objectivity.

35. With regard to the temporal scope of the study, dealt with in section E, he was more than ever convinced that the main thrust should be forward-looking, although that did not preclude the analysis of past and present situations to the extent to which they might affect the practical objective of the study, which was to project into the future past and current experiences derived from agreements concluded between States and indigenous populations.

36. As far as the juridical scope of the study was concerned, in paragraph 114 of his preliminary report he indicated the three legal issues on which he had focused his attention as he had progressed in his research and which he intended to follow up - the activities of the so-called "charter companies", the legal status of indigenous peoples which were not parties, at present, to any treaty, agreement or constructive arrangement, and the issue of national and international conflict-resolution mechanisms. Lastly, in section G, he noted that the structure of the study was the same as that which had been proposed in the 1988 outline, although he was still free to change it.

37. Chapter IV contained his conclusions and recommendations regarding certain aspects of his future work. In particular, he would need to receive, as soon as possible, the replies to the questionnaire which had been distributed at the beginning of the year to Governments, intergovernmental and non-governmental organizations and indigenous peoples' organizations (para. 124). He would not be able to conclude his work successfully unless he obtained the necessary assistance and he requested authorization to submit a partial progress report in 1992 to the Working Group and to the Sub-Commission (para. 128).

38. Mr. Türk took the Chair.

39. Mr. HATANO expressed satisfaction that the Working Group on Indigenous Populations, of which he was a member, had completed its first reading of the preamble and most of the operative part of the draft declaration on the rights of indigenous peoples. One of the points raised during the discussion in the Working Group had been the need to place greater emphasis on the aspirations of indigenous peoples in the draft declaration, since from a legal standpoint a declaration had no binding force. Although that was true in theory, in practice it was extremely difficult for a State to act at variance with the provisions of certain declarations such as the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples or the Declaration on Permanent Sovereignty over Natural Resources proclaimed by the General Assembly in its resolution 1803 (XVII). That was why some jurists described that kind of declaration as "soft law". It could also happen that all those who had not participated in the work on the draft declaration might consider, in good faith, that they could legally exercise the rights set forth in it. Furthermore, it was practically impossible to delete any right once it was established in a declaration when that instrument subsequently became a treaty. Consequently, there was no reason to display less caution when elaborating a declaration than when drafting a treaty merely because a declaration was considered not to have binding force.

40. He also wished to draw attention to the question of the definition of indigenous peoples. It was true that there were a number of declarations in which the subject-matter was not precisely defined. Nevertheless, such a definition appeared essential now for two reasons. The first, procedural in nature, was that most declarations which did not contain a definition had been adopted before the adoption in 1986 of General Assembly resolution 41/120, in which the Assembly had invited United Nations bodies to bear in mind its guidelines in developing international instruments in the field of human rights. There was no doubt that the Sub-Commission was included in that invitation and that the draft declaration being prepared would be one of the international instruments in the field of human rights. In those circumstances, the Sub-Commission had to respect the Assembly's guidelines, under which such instruments should, inter alia, be sufficiently precise to give rise to identifiable and practicable rights and obligations. He wondered whether it could really be said that the draft declaration on the rights of indigenous peoples was "sufficiently precise" if it did not indicate which peoples and which organizations would have rights and obligations arising under it. The second reason was that, as many participants in the Working Group had pointed out, the definition of indigenous peoples given in ILO Convention No. 169 was, far from satisfactory, since the concept of "self-identification" contained in it was perhaps useful in identifying a "group" of indigenous people but could not be applied also to every individual as a fundamental criterion for determining whether he or she should be considered indigenous or not. The working definition proposed by Mr. Martínez Cobo in his study (E/CN.4/Sub.2/1986/7) was practical, but it must be borne in mind that it had been aimed primarily at collecting information for his study from various countries, which was very different

from what the Sub-Commission was trying to do in drawing up a draft declaration. Nevertheless, he would not insist on that point and could be satisfied with the inclusion of a "broad" definition of "indigenous peoples" in the preamble to the draft declaration. He was even willing to accept, albeit reluctantly, that there should be no definition at all if the other members of the Working Group considered that to be more appropriate.

41. In any event, and quite apart from the draft declaration being prepared, an international definition of indigenous peoples should be established as soon as possible, since several years would probably elapse before the draft declaration was adopted by the Sub-Commission, the Commission, the Economic and Social Council and finally the General Assembly and before the rights of indigenous peoples were guaranteed by a treaty binding upon States parties. A declaration or a treaty was only one of the ways in which the rights of indigenous peoples could be protected. An effort should be made to eliminate any form of discrimination to which they might be subject at present and, in order to do so, it would be necessary to know in what areas and to what extent they were discriminated against in their respective States, and that required a definition of them. An example was the case of the Ainus in his own country, Japan. Until recently the Ainus had been considered not as an indigenous people but as Japanese who, although they had special customs and traditions, enjoyed all the rights accorded to other citizens and were therefore, in appearance, perfectly assimilated. However, when the concept of indigenous peoples had emerged, the international community had begun to criticize the policy of assimilation pursued by the Japanese Government, which had therefore decided to investigate the way of life of the Ainus in order to determine whether they had been subjected to any form of discrimination. It had then come up against the problem of defining an indigenous people. The local authorities of Hokkaido, the northern region of Japan where most of the Ainus lived, had therefore tried to establish a definition of the Ainus under which any descendant of Ainus and any person who, though not Ainu origin, lived in an Ainu family as a result of marriage or adoption was considered an Ainu. Persons who declined to be Ainu, even if it was clear that they had Ainu blood in their veins, were not considered Ainus. Some 30,000 Ainus had been identified in the whole country, which had a total population of approximately 120 million. That definition was very vague and very arbitrary, but those who had established it could not be criticized, as they had had no other option since there had not been, and there still was not, any internationally recognized definition of indigenous peoples that satisfied everyone.

42. He was therefore convinced that an appropriate definition would enable the Governments of all States in which indigenous people lived to take action and to reinforce the measures already taken with a view to securing the protection of indigenous peoples and improving their living conditions.

43. Mr. RIVAS POSADA thanked Mrs. Daes for the very high-quality work which she had done as Chairperson-Rapporteur of the Working Group on Indigenous Populations. With regard to the draft declaration, he noted with concern that operative paragraph 1 of part I contained a reference to the right of indigenous populations to self-determination. That idea, so problematic in

both domestic and international law, seemed ambiguous in the context under consideration, particularly since it was associated in the same paragraph with the idea that indigenous peoples might freely determine their relations with the States in which they lived. That was going too far and gave the impression that indigenous peoples could determine their relations with States unilaterally and not necessarily as a result of negotiations or consultation with the representatives of the constitutional and legal order to which they were subject. It was certainly not easy, in a charter of rights, to strike a convincing and acceptable balance between the rights, duties and obligations of each party but, if standards were to be complied with, it was essential to reflect in such a draft the need to promote policies of consultation, dialogue and negotiation between indigenous peoples and the legitimately constituted authorities of the States in which they lived. As it stood, the text of operative paragraph 1 gave the impression that there was no such consultation, whereas it was essential in every respect. He was sure he was merely expressing concerns which were not new to the Working Group and which would only increase as work on the draft declaration progressed and as long as it contained certain exaggerated and ambiguous ideas which might cause great difficulties in the future.